



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Group Art Unit: 2145
Examiner: Mr. Wen Tai Lin

In re PATENT APPLICATION of:

Applicant : Lawson A. Wood)

Serial No. : 10/649,932)

Filed : August 28, 2003)

For : METHOD FOR RECOGNIZING AND)
DISTRIBUTING MUSIC)

Attorney Ref. : AW-20)

REPLY BRIEF

November 6, 2006

Attn: Mail Stop Appeal Brief-Patents

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Introduction

This Brief is being filed pursuant to 37 CFR 41.41, in reply to the Examiner's Answer dated September 8, 2006. The arguments presented below are directed to the "Response to Arguments" section on pages 8-13 of the Examiner's Answer.

A fee of \$ None is being submitted concurrently. Should this remittance be accidentally missing, however, or should any additional fees be needed (including extension of time fees, since Applicant hereby provisionally petitions for any further extensions that may be deemed necessary to avoid abandonment), the Director may charge such fees to our Deposit Account number 18-0002 (and please notify Applicant accordingly, at the telephone number listed below, so that he can reimburse his firm).



Independent claim 1:

The Examiner's Answer takes the position that, since McNab's system implies that both a microphone and a musical instrument are available, "it is reasonable for one to explore the option of playing a keyboard followed by humming a sample of the music to see which method produces the better result...". But such possible experimentation by a **user** of McNab's system is not equivalent to a motivation for an **ordinarily skilled person** to provide someone who is to vocalize a specimen with "a set of keys to hear and choose from before vocalizing the specimen" in accordance with claim 1.

The Examiner's Answer also suggests that "one may use the keyboard to tune his own voice up to a confident level on a musical scale...". A person's "confident level" with a song, though, depends on whether the person thinks that both the lowest note in the song and the highest note are within his vocal range. Consider a difficult song like the "Star Spangled Banner," for example. A person who had a sudden impulse to sing the "Star Spangled Banner" in the shower would typically begin singing and then start over again in a different key if the low notes turned out to be too low for him or if the high notes turned out to be too high. Even if the person had a waterproof keyboard with him in the shower, it is difficult to see how the person could pick a starting note for the "Star Spangled Banner" from the keyboard with any degree of confidence that both the high notes and the low notes that follow would be within his vocal range. The comment in McNab's abstract that "[y]ou can sing (or hum, or play) a few notes and search for the tune in a database..." would simply not have supplied a motivation for an ordinarily skilled person to provide someone who is to vocalize a specimen with a set of keys to choose from in accordance with claim 1.

Independent claim 34:

The "Response to Arguments" section of the Examiner's Answer mentions simulated instruments and electronic keyboards in its discussion of claim 34, but step (a) of claim 34 provides that a specimen is generated "**using an apparatus configured for sending and receiving information via a communication network, the apparatus**

including a keyboard and an audio transducer for producing sounds, keys of the keyboard being assigned notes of a musical scale and the notes being sounded by the transducer **when the keys are manually actuated** by the person.” This language reads on a typewriter-type keyboard of a personal computer, for example, but not on a piano-type keyboard that is connected to a personal computer or an image of a piano keyboard displayed on a personal computer’s monitor. The references do not suggest generating a specimen by manually actuating keys of a keyboard that is already present, as part of an apparatus that is configured for sending and receiving information via a communication network, in accordance with claim 34.

Dependent claim 33:

It is respectfully submitted that the discussion of claim 33 in the “Response to Arguments” section of the Examiner’s Answer represents no more than a hindsight analysis of why the features recited in claim 33 are desirable. This falls short of an explanation of why a person with only ordinary skill in the art would have been led to these features by the prior art.

The “Response to Arguments” section comments that Waldhams (US 5,225,618) “teaches a simulated music composition instrument that is equipped with keys (i.e., buttons) for purpose of play, record, rewind/forward, and tempo control, etc. [see Fig. 4].” However, what Wadhams discloses is a complex apparatus for studying and manipulating music, and calling this apparatus “a simulated music composition instrument” should not disguise the fact that Wadhams’ apparatus is quite unlike anything that McNab might have had in mind as an instrument that could be used to generate a sample representing music that is to be identified. Furthermore, the keys or buttons in Wadhams’ Figure 4 are mechanical components (column 4, lines 50-56), not options that are displayed on a monitor along with a simulated musical instrument in accordance with claim 33.

Dependent claim 35:

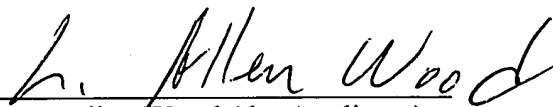
As was noted above, independent claim 34 contains language that reads on a typewriter-type keyboard of a personal computer, for example. Claim 35 adds that “a

mapping that associates notes of the scale with keys of the keyboard” is displayed. The mapping of claim 35 has nothing in common with the simulated piano keyboard and piano-roll grid that are shown in Figure 13 of Iwamura (US 6,188,010).

Conclusion:

For the foregoing reasons, as well as the reasons advanced in Applicant’s main Appeal Brief, it is respectfully submitted that the claims on appeal are patentable over the cited references. Accordingly, the Examiner’s rejection of these claims should be reversed.

Respectfully submitted,

A handwritten signature in cursive script, reading "L. Allen Wood".

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